FILE COPY

Office - Supreme Court, U. S.
FILED
NOV 10 1948
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1948.

No. 19

ALFRED S. PENN,

Petitioner,

vs.

CHICAGO AND NORTH WESTERN RAILWAY COMPANY, A CORPORATION,

Respondent.

ANSWER OF PETITIONER TO RESPONDENT'S PETITION FOR REHEARING.

ROYAL W. IRWIN,
Attorney for Petitioner.

THE DONNELLEY-GARRISON PRINTING COMPANY, 815 WEST ADDISON, CHICAGO

POOR COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1948.

No. 19.

ALFRED S. PENN,

Petitioner,

vs.

CHICAGO AND NORTH WESTERN RAILWAY COMPANY, A CORPORATION,

Respondent.

ANSWER OF PETITIONER TO RESPONDENT'S PETITION FOR REHEARING.

The respondent has failed to comply with Rule 33 of the Rules of the Supreme Court of the United States which provides:

> "It must * * * be supported by a certificate of counsel to the effect that it is presented in good faith and not for delay."

The petition ought to be stricken for failure to comply with the Rules.

It is possible that counsel for the respondent was unwilling to make the certificate necessary for jurisdiction.

In view of the reversal ordered by this Court, it is at

once apparent that no argument can be made against the validity of instruction E. Instruction E is as follows:

> "If you believe from a preponderance of the evidence that the coupler on the car in question was defective in that the same could not be uncoupled by means of the pinlifter, and that the plaintiff, at the time he was injured, was attempting to uncouple said coupler and was injured as a direct and proximate result of said alleged defective condition thereof, you should find the defendant not guilty." (Transcript, 164.)

This Court, in reversing the Court of Appeals, must necessarily have based its finding upon the proposition of law stated in this instruction.

In view of the finding entered by this Court, it would be impossible for the Court of Appeals to do otherwise than find the proposition of law stated in the instruction correct.

The Circuit Court of Appeals in its opinion made no reservations, and it must be presumed that its judgment was based upon all the contentions raised in that Court by petitioner.

We respectfully submit that respondent's petition for rehearing should be denied.

Respectfully submitted,

ROYAL W. IRWIN,
Attorney for Petitioner.

POOR COPY
BLEED THROUGH